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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,873	12/20/2004	Jochen Fink	PP/1-22699/A/CGM 515/PCT	3532
324 CIBA SPECIA	7590 06/26/2007 LTY CHEMICALS CORP	ORATION	EXAM	INER
PATENT DEP	ARTMENT		MULLIS, JEFFREY C	
540 WHITE PI P O BOX 2005			ART UNIT	PAPER NUMBER
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			06/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	4000	Application No.	Applicant(s)			
Office Action Summary		10/518,873	FINK ET AL.			
		Examiner	Art Unit			
		Jeffrey C. Mullis	1711			
	The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply					
WHIC - Exter after - If NC - Failu Any	ORTENED STATUTORY PERIOD FOR REPLY CHEVER IS LONGER, FROM THE MAILING DANSIONS of time may be available under the provisions of 37 CFR 1.13 SIX (6) MONTHS from the mailing date of this communication. It is period for reply is specified above, the maximum statutory period we re to reply within the set or extended period for reply will, by statute, reply received by the Office later than three months after the mailing and patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tim will apply and will expire SIX (6) MONTHS from a cause the application to become ABANDONE	l. ely filed the mailing date of this communication. O (35 U.S.C. § 133).			
Status						
2a) <u></u> 	Responsive to communication(s) filed on <u>23 Ap</u> This action is <b>FINAL</b> . 2b) This Since this application is in condition for allowar closed in accordance with the practice under E	action is non-final.  nce except for formal matters, pro				
Dispositi	on of Claims					
4) Ciaim(s) 1-5 and 7-20 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration.  5) Claim(s) is/are allowed.  6) Claim(s) 1-5 and 7-20 is/are rejected.  7) Claim(s) is/are objected to.  8) Claim(s) are subject to restriction and/or election requirement.						
Applicati	on Papers					
_	The specification is objected to by the Examine	r				
	The drawing(s) filed on is/are: a) ☐ acce		xaminer.			
•	Applicant may not request that any objection to the					
	Replacement drawing sheet(s) including the correcti	ion is required if the drawing(s) is obj	ected to. See 37 CFR 1.121(d).			
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.						
Priority u	ınder 35 U.S.C. § 119					
<ul> <li>12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</li> <li>a) All b) Some * c) None of:</li> <li>1. Certified copies of the priority documents have been received.</li> <li>2. Certified copies of the priority documents have been received in Application No.</li> <li>3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> <li>* See the attached detailed Office action for a list of the certified copies not received.</li> </ul>						
		,				
Attachmen						
2) Notice	e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review (PTO-948) mation Disclosure Statement(s) (PTO/SB/08) r No(s)/Mail Date	4) Interview Summary of Paper No(s)/Mail Da 5) Notice of Informal Pa 6) Other:	te			

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Art Unit: 1711

All precious rejections are hereby withdrawn due to applicants amendment...

Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "average molecular weight" where unqualified as to the type of sttistcal distribution of molecular weight (for instance number or weight average) is uclear since the various expressions of molecular weight vary.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5 and 7-20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kazmaier et al. (US 5,919,861).

Patentees disclose a process in which styrene is polymerized in the presence of TEMPO (encompassed by applicants generic structure of instant claim 2) to yield a TEMPO terminated polystyrene which is then reacted at 200 degrees centigrade with an unsaturated polyester with physical blending having weight average molecular weight of 107,000 (Example V in column 29). Since the material is of high molecular weight and is apparently not thermoset (as evidenced by the fact that molecular weight

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measurements were possible), the product would reasonably appear to be thermoplastic or elastomeric. Since applicants and patentees both may contact a polymer with nitroxyl terminated oligomer while heating patentees product would reasonably appear to be a graft as required by the claims. Note examples I-IV for similar reactions (although temperature is not specified) where the production of a "graft" is explicitly disclosed. Furthermore as known in the art and disclosed by Kazmaier, nitroxyl terminated polymers and oligomers are capable of reinitiating polymerization of unsaturated compounds and therefore reaction of patentees nitroxyl terminated polystyrene with the unsaturation in the polyester (such as would result in a graft) would be assumed by those skilled in the art.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al. 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

Claims 1-5 and 7-20 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Chin et al. (US 6,444,754).

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Patentees in Example 3 disclose a process in which a polystyrene produced by

group is contacted at 235-275 degrees centigrade with thermoplastics having epoxy

polymerization of styrene in the presence of a nitroxyl compound having a glycidyl

reactive groups such as polyamide or PPE. Note Example 3 in this re and also that

styrenic bloc copolymer is present. Since the glycidyl group containing polystyrene

would be expected by those skilled in the art to be reactive with at least the sort of end

units expected to be present in PPE and polyamide as well as the maleic anhydride

moieties and residual unsaturation of the SEBS (admittedly which would be present in

very small amounts), those skilled in the art would assume a graft would be formed.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note <u>In re Fitzgerald et al.</u> 619 F. 2d

Any inquiry concerning this communication should be directed to Jeffrey C. Mullis M-F, 9-5pm at telephone number 571 272 1075.

67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

Jeffrey C. Mullis Primary Examiner Art Unit 1711

**JCM** 

6-20-07

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